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2 UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF OHIO

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WESTERN DIVISION

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ERIC L. JEFFRIES, :  
6 :  
7 Plaintiff, : Case No. C-1-02-351  
CENTRE LIFE INSURANCE :  
8 COMPANY, et al., : (Judge Beckwith)  
9 :  
Defendants. :  
- - - - -

10

11 Deposition of MICHAEL E. LUGGEN, M.D,  
12 a witness herein, called by the Defendants for  
13 direct examination, pursuant to the Federal Rules of  
14 Civil Procedure, taken before me, Angie Portune, a  
15 Registered Merit Reporter and Notary Public in and  
16 for the State of Ohio, at the offices of Wood &  
17 Lamping, Cincinnati, Ohio, on Friday, September 12,  
18 2003, at 10:00 AM.

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09:48:34 1 MICHAEL E. LUGGEN, M.D.

2 being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. ELLIS:

09:48:35 5 Q Doctor, would you identify yourself for the  
6 record, please.

7 A I'm Dr. Michael E. Luggen. I'm a  
8 rheumatologist.

9 Q Your offices are where here?

09:49:03 10 A I have offices at the Cincinnati Arthritis  
11 Associates, which is 2123 Auburn Avenue, Suite 630.  
12 I also have offices at Deaconess Arthritis Center,  
13 311 Straight Street, and I am an Associate Professor  
14 of Clinical Medicine at the University of Cincinnati

09:49:37 15 in the division of immunology.

16 Q Thank you. Doctor, during the course of  
17 your practice, the records that we have received  
18 indicate you had occasion to consult with  
19 Dr. Nunlist-Young and others concerning the care of

09:49:56 20 Eric Jeffries; is that correct?

21 A That's true.

22 Q First of all, you have that set of records  
23 in front of you which were provided by my office at  
24 your request, is that right?

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09:53:56 1 A I had two subsequent visits with  
2 Mr. Jeffries at that facility. The practices are  
3 actually different, so that there is not that single  
4 record. So the record that I accumulated or was  
09:54:20 5 developed with Mr. Jeffries at the one location was  
6 not transferred to the other. And so I don't know  
7 that anyone has the subsequent records. Although  
8 they're not particularly informative, from my point  
9 of view. But I have it with me. I just realized  
09:54:58 10 that last night.

11 Q Okay. We can make copies of those right  
12 now.

13 MR. ROBERTS: Could you have a copy of  
14 these made for me?

09:55:25 15 MR. BLASKE: Sure. No problem.

16 Q Wait a minute, because the Doctor has some  
17 other records.

18 A Yeah. So subsequent to the last date  
19 there, which I think was sometime in '99. Look for a  
09:55:53 20 second here. Last visit 4/4/00 -- oh. That was --  
21 no. I'm sorry. Last visit at the University I don't  
22 have the record here anymore. But I have the first  
23 visit at the other office as of 12/23/99, and there  
24 were three visits. The last was on 4/4/00. I did

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10:00:52 1 limitation of flexion of motion of his lumbar spine.

2 Q The limitation, looking at your notes, you  
3 say there's some voluntary limitation of flexion of  
4 motion. Why the voluntary?

10:02:19 5 A I think what I meant to suggest is that it  
6 was limited perhaps by pain more than structural  
7 abnormality. Meaning that perhaps it was possibly a  
8 variable to that certain extent.

9 Q Okay. There didn't appear to be a

10:02:51 10 consistent limitation?

11 A Yes.

12 Q Your conclusion at that time was possible  
13 autoimmune disorder with an unclear cause and no  
14 objective abnormalities. I assume there was no work

10:03:58 15 done at that time with regard to his blood work and  
16 so forth, no lab work.

17 A No.

18 Q All right. The next time you saw him was a  
19 couple of months later in February. I noted that

10:04:15 20 there was no return visits scheduled at the time --  
21 yeah. There was a return visit in two months which  
22 he kept in February of 2000.

23 A Mm-hmm.

24 Q Before I get there, back in December notes

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10:04:38 1 again, he makes reference to sending that DNA sample  
2 to some laboratory in Berkley.

3 A Yes.

4 Q What was the nature of that discussion?

10:04:51 5 What was the purpose of that?

6 A You know, I'm not sure. I believe it had  
7 to do with a possibility that he might have been  
8 predisposed to develop a side effect or complication  
9 of hepatitis B immunization, because there had been  
10 some suggestion in the literature that certain  
11 genetic types may be more susceptible. But I don't  
12 know anything about it directly. Never received a  
13 report or a communication.

14 Q Okay. Did you do the search in the

10:05:51 15 literature to find that this was a viable medical  
16 possibility?

17 A No.

18 Q How did it come about?

19 A It was suggested to me by Mr. Jeffries.

10:06:05 20 Q During the course of your treatment, did  
21 Mr. Jeffries seem to be focused on his illness and  
22 its possible causes?

23 A Yes.

24 Q When you saw him in February of 2000, did

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10:08:38 1 A Correct.

2 Q In that, according to your note, the  
3 studies included thyroid studies, serum protein,  
4 electrophoresis?

10:09:02 5 A Mm-hmm.

6 Q Immunoglobulins, immune complex assays,  
7 what is an NK cell reactivity?

8 A It's a type of blood lymphocyte, and  
9 responsible for defending against some types of  
10 infection.

11 Q Okay. Antithyroid microsomal antibodies  
12 and Ig antibodies to benzene.

13 A (Witness nodded head.)

14 Q And according to your note, all of these  
15 were abnormal; is that right?

16 A That's what my note says. And in reviewing  
17 it, that's actually not true.

18 Q Okay.

19 A Immunoelectrophoresis seems to be normal.

10:11:25 20 The thyroid antibodies, antithyroid antibodies would  
21 be abnormal.

22 Q Would that be true if someone had a  
23 thyroidectomy for cancer or had thyroid cancer?

24 A I'm not certain.

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10:29:31 1 A I don't recall. I'd have to look to see if  
2 this is in fact in here. I'm sorry, we're talking --  
3 Q It's in the third paragraph of the  
4 February 24th.

10:29:48 5 A February 24th. Wrong note. Oh. What it  
6 says is that he had difficulty managing the illness  
7 and wanted to do better, and asked for a referral for  
8 psychiatric or psychological counseling.

9 Q Had you discussed with him the potential  
10:37:42 10 that there was some psychosomatic component to his  
11 illness --

12 MR. ROBERTS: Objection.

13 Q -- over the course of your treatment?

14 MR. ROBERTS: Objection.

10:37:54 15 A Not that I recall.

16 Q Did you refer him to that psychologist or  
17 psychiatrist --

18 A Not that I --

19 Q -- in February?

10:38:06 20 A Not that I recall.

21 Q He came back to see you two months later,  
22 apparently, in April of 2000.

23 A Yes.

24 Q And at which time he brought some reprints

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10:49:39 1 Q One of his predominant complaints was right  
2 upper quadrant or abdominal pain; is that right?

3 MR. POWERS: Objection.

4 A Yes.

10:49:51 5 Q Were you aware that that had been a  
6 long-standing problem treated by Dr. Nunlist-Young  
7 back into the early '90s?

8 MR. ROBERTS: Objection.

9 A No.

10:50:09 10 Q Was Mr. Jeffries trying to suggest to you  
11 that this stomach pain was the result of that  
12 hepatitis B shot?

13 MR. ROBERTS: Objection.

14 A I think he was suggesting it was part of

10:50:45 15 the clinical picture that he was presenting at this  
16 time.

17 Q If we go back to your first visit.

18 A Mm-hmm.

19 Q Mr. Jeffries came to you apparently in

10:51:00 20 early October of 1998; is that right?

21 A Correct.

22 Q And at the time he gave you a history.

23 A Yes.

24 Q And the history was one of arthralgias and

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10:55:31 1 know if there was another reason that that came up as  
2 if it might be somehow related to symptoms. To tell  
3 you the truth, I would have to review to see. But I  
4 did not, at least from my notes, explore in any  
10:55:57 5 detail his habits with regard to alcohol.

6 Q You suggested that his past history was  
7 unremarkable. Was the suggestion made to you that he  
8 did not, prior to the time of the hepatitis B shot,  
9 have a need for medical care of consequence?

10:56:26 10 MR. ROBERTS: Objection.

11 A I would probably say that he had no need  
12 for ongoing medical care.

13 Q Did he give you a history of having had the  
14 right upper quadrant pain for a long period of time?

10:56:41 15 MR. ROBERTS: Objection.

16 A Not to my recollection.

17 Q Did he give you a history of being treated  
18 for herpes over a period of time?

19 MR. ROBERTS: Objection.

10:57:02 20 A Not to my recollection.

21 Q Did he give you a history of having  
22 epididymitis or prostate or testicle problems over  
23 the period of time?

24 MR. ROBERTS: Objection.

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11:01:12 1 Q Okay. In the October the 3rd letter, you  
2 said the cause of these joint and muscle pains was  
3 unclear. He has severe pain, he had the exams  
4 completely normal, as are the lab tests; correct?

11:02:32 5 A Correct.

6 Q You also suggest in there at least that  
7 Mr. Jeffries was arguing to you that the problem may  
8 have stemmed from a hepatitis B immunization?

9 MR. ROBERTS: Objection.

11:02:49 10 A Yes.

11 Q Again, was Mr. Jeffries, at the time of  
12 your first visit, focused on his symptoms and the  
13 potential cause?

14 MR. ROBERTS: Objection.

11:03:01 15 A Yes.

16 Q You saw him a couple of weeks later?

17 A Yes.

18 Q And at that time he was telling you that he  
19 was feeling worse and having more trouble, but once  
11:03:17 20 again the objective examination and lab work didn't  
21 suggest any real change; is that right?

22 MR. ROBERTS: Objection.

23 A Correct.

24 Q They remained normal?

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11:03:32 1 MR. ROBERTS: Objection.

2 A Correct.

3 Q And you also noted in there that  
4 Mr. Jeffries would alter his medications, such as  
11:03:46 5 stopping Amitriptyline if he felt that was fair. And  
6 I think at one point you recommended that he taper  
7 Prednisone and he elected to do the opposite and  
8 continue on the Prednisone. Do you recall those  
9 events?

11:05:32 10 MR. ROBERTS: Objection.

11 A Are you referring to a specific visit date?  
12 Q I wish I could tell you, but -- I'll do it  
13 later.

14 A Okay.

11:05:46 15 Q In any event, at this point he did stop  
16 Amitriptyline on his own; correct?

17 MR. ROBERTS: Objection.

18 A Did stop his Amitriptyline. This was from  
19 10/26/98. It does say that. It doesn't say  
11:06:19 20 specifically why or how, or why it was stopped. I do  
21 recall however in answer to the Prednisone, he would  
22 adjust the dose to what he felt, or what he felt  
23 might be beneficial.

24 Q Was it recommended that perhaps he

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11:10:21 1 for your review?

2 A He did.

3 Q Did he try to secure your agreement in his  
4 assessment of both cause and nature of his disease?

11:10:35 5 MR. ROBERTS: Objection.

6 A Umm, I'm not sure I would quite put it that  
7 way.

8 Q How would you put it?

9 A I would put it that he believed that this  
11:10:44 10 was a real possibility, and he wanted my opinion as  
11 to whether or not I thought this was also the case.

12 But not to necessary -- well, by virtue of him  
13 bringing in articles that suggested this was a  
14 possibility, I think he was in a sense attempting to

11:11:15 15 persuade but also to inform, and asking my opinion as  
16 to its value.

17 Q Were you made aware that he would travel to  
18 Canada, England, Brussels, Texas, Alabama,  
19 California, to explore and try various and sundry

11:12:05 20 tests and treatments and so forth for this disease?

21 MR. ROBERTS: Objection.

22 A Yes.

23 Q And do so primarily at his own expense?

24 A I don't know about the payment source.

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11:12:23 1 Q Okay.

2 A But I do know that he did travel, because I  
3 received from most, if not all of the consultants,  
4 opinions. Or many, if not all.

11:12:40 5 Q Did you ever see any objective verification  
6 of a recognizable disease in the entire course of  
7 treatment with Mr. Jeffries other than the thyroid  
8 cancer that he did have and was rectified?

9 MR. ROBERTS: Objection.

11:13:03 10 A Nothing that I could diagnose.

11 Q Would the symptoms, coupled with the  
12 examinations and physical findings, and the  
13 activities of Mr. Jeffries in the way he approached  
14 the disease process, suggest potentially a somatic or  
15 psychosomatic source and then an obsession with  
16 finding that illness or source?

17 MR. ROBERTS: Objection. Foundation.

18 A I'm not sure I can comment one way or the  
19 other on that.

11:13:50 20 Q Would you have any reason to suggest that  
21 there is not a psychosomatic component to  
22 Mr. Jeffries' course?

23 MR. ROBERTS: Objection. Same.

24 A I think the fact that he was persistent and

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11:14:12 1 consistent in his symptomatology, for the most part  
2 suggested to me that there was something, something  
3 responsible for it. What that was, was certainly  
4 beyond me.

11:14:27 5 Q Did he bring you photographs of his  
6 genitals or his stools as assistance to your  
7 diagnosis?

8 A I believe he did.

9 Q Have you ever had any other patient go to  
11:14:50 10 the extremes that Mr. Jeffries did in the search for  
11 an illness?

12 MR. ROBERTS: Objection.

13 A Not many, but yes. I have had pictures  
14 before which were striking, shall we say.

11:16:49 15 Q How about traveling to different countries  
16 and all over the United States seeking sort of fringe  
17 medicine?

18 MR. ROBERTS: Objection.

19 A I guess I can answer all these questions.

11:17:05 20 Q Sure.

21 A To a lesser extent, I've had patients  
22 travel abroad to other practitioners with and without  
23 any suggestion or recommendation. But I don't think  
24 I have seen anyone who has been so persistent as

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11:17:26 1 Mr. Jeffries.

2 Q You have made mention on a number of  
3 occasions of the potential diagnosis of chronic  
4 fatigue syndrome; is that right?

11:17:35 5 A (Witness nodded head.)

6 Q Is that a disease, a definitive disease, or  
7 is this something we're still trying to figure out  
8 from the medical standpoint as to whether it's  
9 psychological or physical in nature?

11:18:22 10 MR. ROBERTS: Objection.

11 A I believe that it's a syndrome, a  
12 constellation of symptoms, without an identifiable  
13 explanation as to the cause or the pathogenesis, and  
14 without specific therapy. I believe it is recognized  
11:18:57 15 as a syndrome appearing in a significant minority of  
16 the population. Such that there has been efforts  
17 made to define the case definition for research that  
18 is by the CDC and other organizations. So I don't  
19 believe it has been elucidated as yet.

11:20:12 20 Q As to exactly what it is.

21 A Correct.

22 Q Or whether it's psychological or physical.

23 A Correct.

24 Q From the physical standpoint, however, you

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11:25:02 1 A Not that I was able to determine, but I was  
2 not focused on that area, quite honestly.

3 Q At any time during the course of your  
4 treatment, did Mr. Jeffries display to you in any way  
11:25:15 5 a cognitive insufficiency?

6 MR. ROBERTS: Objection.

7 Q Or cognitive problem?

8 A No.

9 Q Did you receive some information from the

11:25:30 10 Cleveland Clinic Foundation from Dr. Calabrese?

11 A I did.

12 Q Dr. Calabrese, again, was a consultant that  
13 saw Mr. Jeffries. Did he also have a dearth of any  
14 objective physical findings to explain the symptoms

11:26:01 15 being complained of?

16 MR. ROBERTS: Objection.

17 A I don't believe he found anything of  
18 significance on his clinical exam or on the  
19 laboratory testing.

11:26:18 20 Q In his report, did he suggest to you that  
21 the longer he remains inactive and the more he  
22 deconditions, the longer time it's going to take him  
23 to get back?

24 A He did say that.

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